

REMARKS

The drawings are amended, per the attached Submission, to overcome a few noted informalities contained therein. Also please enter the enclosed new drawings Figs. 1A, 1B and 4, accompanying this Submission. It is noted that all the subject matter of the new diagrammatic figures is based on material expressly within the original disclosure and claims and as such, no new matter has been entered into this case. The specific disclosure relating to new Fig. 1A, 1B is found at least in paragraph 014 of the specification, disclosure for new Fig. 4 is found at least in paragraph 043 of the detailed description. If any further amendment to the drawings of this application is believed necessary, the Examiner is invited to contact the undersigned representative of the Applicant to discuss the same.

The above newly entered and amended paragraphs of the specification overcome some informalities noted in the specification on file. As the newly entered and amended paragraphs only contain subject matter that was included in the original specification the undersigned avers that the newly entered and amended paragraphs of the specification do not contain any new subject matter. The basis for the amendments to newly added Figs. and paragraphs can be found in original claims 2, 4, 6 as well as in paragraphs 015 and 039-043 of the original specification.

Turning to the claim rejections, claim 1 is rejected, under 35 U.S.C. § 102(b), as being anticipated by Inokuchi `676. The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

As the Examiner is aware, in order to properly support an anticipation rejection under 35 U.S.C. § 102(b), the cited reference, Inokuchi `676 must disclose each and every limitation of the presently claimed invention. Inokuchi `676 teaches a hydraulic pressure supply apparatus with a controller 14. The controller 14 controls the opening and closing of a pressure reducing valve 8 depending only on signals Vf and Ve from a flow rate sensor 12 and a pressure sensor 36 (see Figs. 1, 7, 8, 12 and 18 and column 4, lines 65-68 which states "[t]he controller 14 controls the pump 4 and the proportional pressure reducing valve 8 upon

receiving the signals Vf and Ve from the flow rate sensor 12 and the pressure sensor 36". After a thorough review of Inokuchi '676, the Applicant can find no teaching, suggestion or disclosure that the controller 14 receives signals from any source other than the flow rate sensor 12 and the pressure sensor 36.

This is in contrast to the claim elements and operation of the hydraulic pressure reserve system of the current application. As recited in the current specification at paragraph 013, "[t]he hydraulic pressure reserve system includes. . .an accumulator controller responsive to a primary hydraulic circuit pressure and to the accumulator pressure for controlling the accumulator control valve". In other words, in the Applicant's invention, the accumulator controller 56 controls the control valve 52 depending on (1) the pressure 22P of the primary hydraulic circuit in relation to (2) the accumulator pressure 50P as shown in Applicant's Fig. 1.

In order to emphasize the above noted distinctions between the presently claimed invention and the applied art, the independent claims of this application recite the features of "an accumulator controller responsive to a primary hydraulic circuit pressure and to the accumulator pressure for controlling the accumulator control valve. . .", for example, as recited in the 4th paragraph of claim 1. Nowhere in the cited Inokuchi '676 reference is there any disclosure, teaching or suggestion as to determining, using or comparing the primary hydraulic pressure with the accumulator pressure as claimed by the Applicant.

In addition, claim 1 also includes the further feature wherein, "the accumulator controller actuates the accumulator control valve to allow a flow of the hydraulic fluid from the primary hydraulic circuit and into the accumulator tank *when the primary hydraulic circuit pressure is greater than the accumulator pressure*". Again, this use of the accumulator pressure 50P is entirely different than the disclosure of Inokuchi '676 which has "[t]he valve is controlled so that its set [regulating] pressure is higher than the pressure required in the load side and is lower than the target discharge pressure of the pump" as discussed at column 1, lines 53-55.

Similarly, as recited in the last paragraph of claim 1,

the accumulator controller actuates the accumulator control valve to allow a flow of the hydraulic fluid from the accumulator tank to the primary hydraulic circuit when the primary hydraulic circuit pressure is lower than a desired minimum primary hydraulic circuit pressure, thereby raising the primary hydraulic circuit pressure towards the desired primary hydraulic circuit pressure.

Again this is substantially different than Inokuchi `676 which controls the valve to regulate the pressure discharged from the accumulator ". . .when the pressure in the conduit is lower than the set pressure of the valve. . .". At least these features as specifically recited in claim 1 are not disclosed, taught or even suggested by the reference and believed to clearly and patentably distinguish the presently claimed invention from all of the art of record, including Inokuchi `676.

Claims 2-6 are rejected, under 35 U.S.C. § 103(a), as being unpatentable over Inokuchi `676 in view of the prior art admission of paragraphs [039] - [043] of the specification. Although each of these claims is dependent upon claim 1 which in view of the above amendments and remarks regarding claim 1 is believed allowable, in order to be fully responsive, the Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

The Applicant takes exception to the Examiner's interpretation of Applicant's disclosure at paragraphs 39-43 as "admissions" especially to the extent which the Examiner asserts on pages 4-5 of the Official Action. As an initial matter this subject matter is found in the Description of the Invention section of the specification, not in the Background of the Invention section of the specification. These paragraphs are in no way admissions that the disclosure found within these paragraphs are known in the prior art. The cited paragraphs are merely a continuation of the detailed description and exemplary disclosure discussing further details and alternatives of the claimed invention.

Paragraphs 039-041 disclose that accumulator Controller 56 and Accumulator Control Valve 52 may be implemented as a self-controlling Accumulator Control Valve 58 wherein the flow of Hydraulic Fluid 12 through Accumulator Control Valve 58 in either direction is dependent

upon a Differential Pressure 60 across Accumulator Control Valve 58. The fact that this Detailed Description of the Invention may be “. . . recognized and understood by those of ordinary skill in the relevant arts. . .” as recited by the Applicant at the introduction to paragraph 039, is not an admission that the subsequent disclosure is known, only that the Applicant's subsequent description is thorough and sufficient as required under the adequate written description requirement of 35 U.S.C. § 112, 1st paragraph, to set forth “. . . in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same. . .”. Such an attempt to create tension between the statutory requirements of 35 U.S.C. § 103 and 35 U.S.C. § 112, 1st paragraph are not only contrary to established case law, but disingenuous to the spirit, rules and procedure of patent prosecution.

With regards to paragraph 043, the fact that accumulator control valves may be known in the art does not in any way admit that these claimed embodiments of the invention would be obvious without the complete detailed description of the invention and all the elements of the claims as set forth in the Applicant's specification and claims. As the Examiner is undoubtedly aware in determining obviousness the claimed invention as a whole must be considered, “In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious”. MPEP 2141.02 quoting Stratoflex, Inc. V. Aeroquip Corp., 713 F.2d 1530.

Nowhere does the Applicant admit that the novel arrangement and combination of elements including the known accumulator valve 56, 58 in the Applicant's claimed invention is known in the art. In other words, it is the Applicant's contention that the rejection of claims 2-8 in view of a combination of Inokuchi '676 and the Applicant's disclosure could only have been accomplished in hindsight attained after reading the Applicant's disclosure. “Any judgements on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in the

art at the time the claimed invention was made and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper." In re McLaughlin 443 F.2d 1392, 1395 170 USPQ 209, 212 (CCPA 1971). Thus, it is the Applicant's position that the only admission, if any, is that accumulator control valves may be to some extent known in the art. Any suggestion or implication that their use, in combination with the other recited elements of the Applicant's disclosure and claims, would be obvious or admittedly known in the art, is strongly denied.

The Applicant, therefore, respectfully requests withdrawal of this obviousness rejection as there are no admissions of the claimed invention contained within the detailed description. If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejections should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the Inokuchi '676 reference, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

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The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Daniels', with a stylized, cursive flourish at the end.

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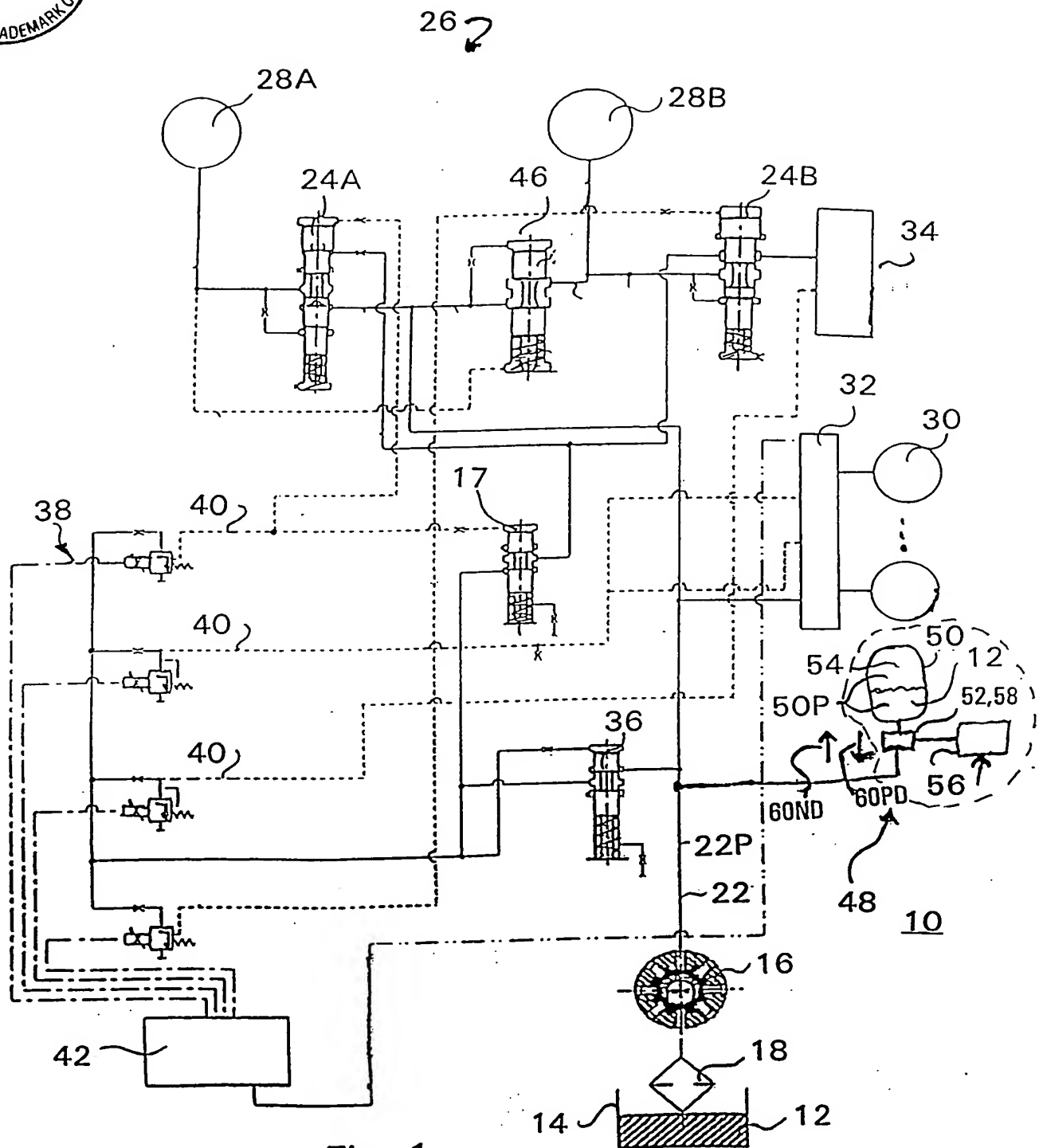


Fig. 1



Annotated Marked-Up Drawing

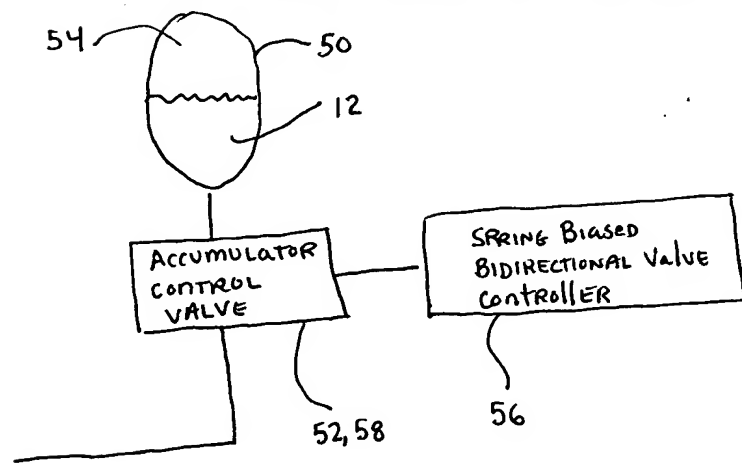


FIG 1A

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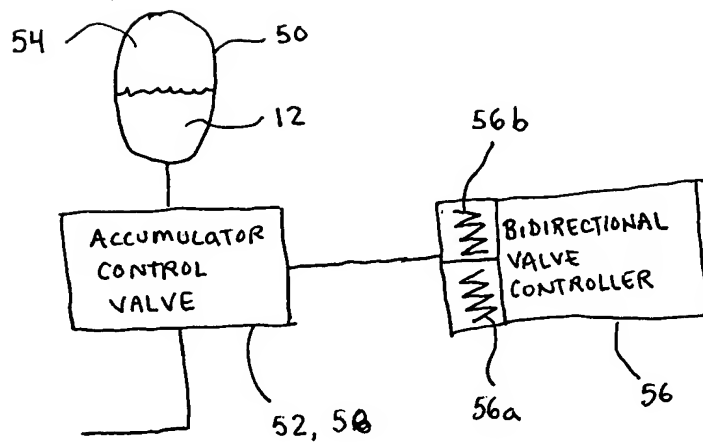


FIG 1B

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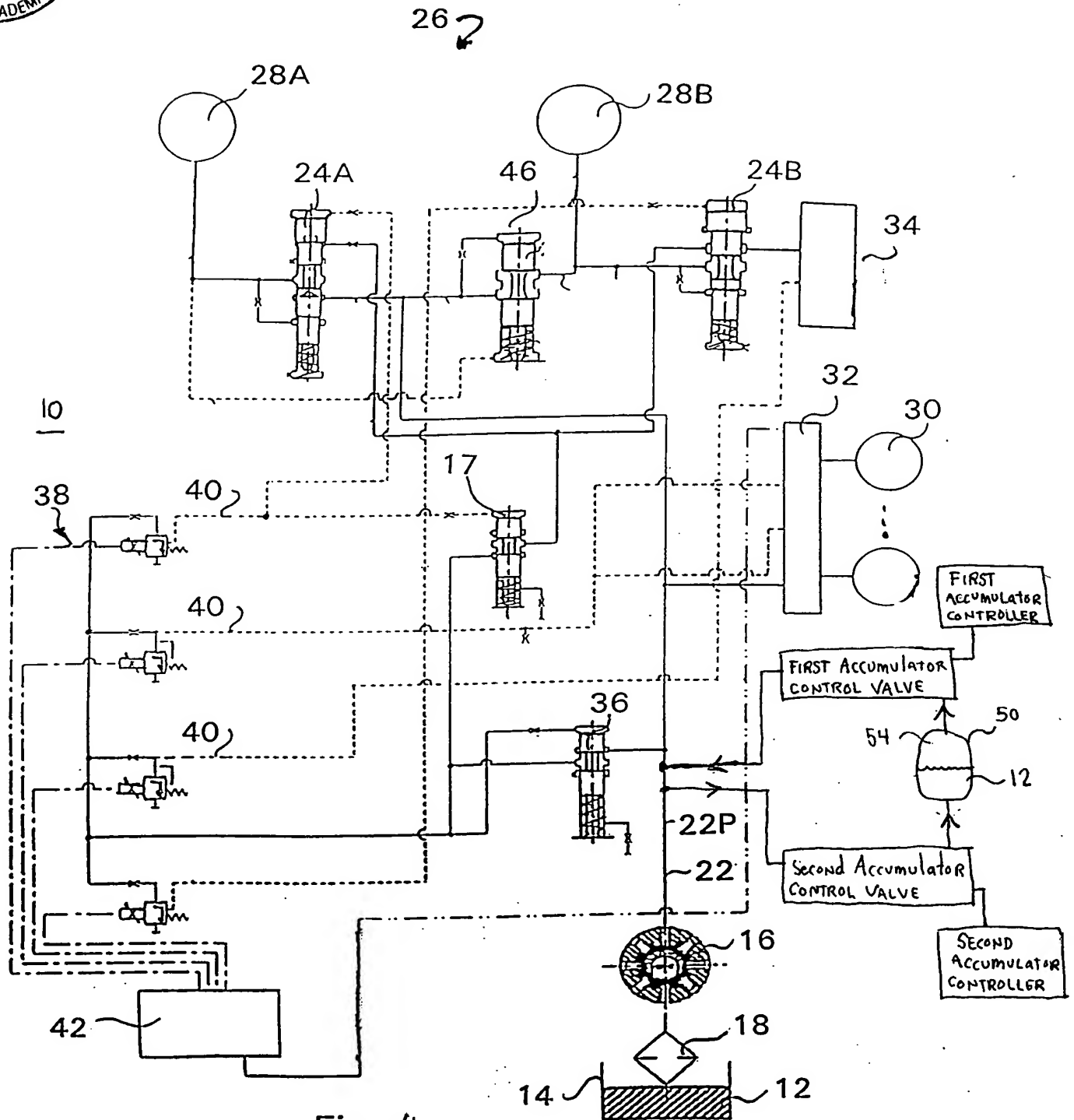


Fig. 4